

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION

RAYONIER ADVANCED MATERIALS,	)	
INC., RAYONIER PERFORMANCE	)	
FIBERS, LLC,	)	
	)	
Plaintiffs,	)	CASE NO.
	)	2:21-CV-00063-LGW-BWC
vs.	)	
	)	
JOSHUA BYERLY,	)	
	)	
_____Defendant.	)	

MOTION HEARING  
BEFORE THE HONORABLE LISA GODBEY WOOD  
June 29, 2021; 10:35 a.m.  
Brunswick, Georgia

APPEARANCES:

For the Plaintiffs:	JAMES B. DURHAM, Esq. MATTHEW BALCER, Esq. Hall Booth Smith, P.C. 3528 Darien Highway Suite 300 Brunswick, Georgia 31523 (912) 554-0093 <a href="mailto:jdurham@hallboothsmith.com">jdurham@hallboothsmith.com</a> <a href="mailto:mbalcer@hallboothsmith.com">mbalcer@hallboothsmith.com</a>
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For the Defendant:	Pro Se
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P R O C E E D I N G S

(Call to order at 10:35 a.m.)

THE COURT: Good morning.

SPEAKERS: Good morning.

THE COURT: Ms. Sharp, call the next case.

THE CLERK: Rayonier Advanced Materials, Incorporated,  
Rayonier Performance Fibers, LLC versus Joshua Byerly. James  
Durham and Matthew Balser for the plaintiff. Mr. Byerly is  
present pro se.

THE COURT: Gentlemen and lady, we are here on the  
Plaintiff Rayonier's application for a temporary restraining  
order pursuant to Rule 65.

Looking at the docket, I notice that Rayonier has  
provided a verified complaint. They have obviously alerted Mr.  
Byerly to the filing of this motion and I note his presence.

The complaint sets forth adequately an allegation of  
subject matter jurisdiction under the federal Defend Trade  
Secrets Act and personal jurisdiction in that it alleges that  
Mr. Byerly lives in Long County, which is within the Southern  
District of Georgia in the Brunswick Division.

With that, Mr. Durham, let me call on you as the movant  
to come forward and walk me through Rule 65 and the four  
requirements for the issuance of a TRO.

MR. DURHAM: Yes, Your Honor. Thank you.

And Your Honor, so you know, also present in the

1 courtroom with me today is Whitney McGuire, who is assistant  
2 general counsel for Rayonier Advanced Materials, as well as Jim  
3 Henderson, who the pulp mill manager in Jesup.

4 THE COURT: All right.

5 MR. DURHAM: Your Honor, you've obviously stated the  
6 basis of what we are here under the DTSA as well as under the  
7 NDA that he has executed, and, of course, the grounds for  
8 granting a temporary restraining order are that you have to  
9 prove that there is a substantial likelihood of success, that  
10 there is the potential for irreparable harm, that the harm to  
11 the plaintiff would far outweigh any harm to the defendant and  
12 that it will not disservice the public. And we believe that we  
13 have all the grounds to be able to do that.

14 Just briefly, as general background for The Court,  
15 Rayonier Advanced Materials -- as The Court is familiar with the  
16 longstanding tradition of Rayonier in this community -- produces  
17 pulp, fluff pulp but also dissolving pulp, and what Rayonier  
18 Advanced Materials is best known for is they are one of the  
19 leaders in the world in dissolving pulp. It's a much smaller  
20 market. It's not the fluff pulp market that is basically a  
21 commodity, and over the years, Rayonier Advanced Materials has  
22 developed their products through protected trade secret  
23 information.

24 What essentially they do is they are able to take pulp  
25 and produce it to certain grades that certain clients need that

1 they take and then they dissolve it down into their product, so  
2 it takes a very pure product and something that Rayonier does  
3 and does it with specification as to each particular customer.

4 THE COURT: Just out of curiosity, I'm having trouble  
5 imagining the usage that customers put it to. Give me a --

6 MR. DURHAM: It goes into medicine. It goes into LCD  
7 screens. It goes into computers. It goes into cell phones. It  
8 goes into any type of filter-type products, so there are a lot  
9 of products that it goes into, and, like I said, it is a smaller  
10 market, but Rayonier Advanced Materials has been the leader in  
11 that market for years and years, and they are the leader in that  
12 market, not because they have the biggest mill, not because they  
13 have the fanciest equipment, not because of anything else, but  
14 it's because of their protected trade secret information, the  
15 intellectual property that they have and essentially, for lack  
16 of a better term, the cooking formulas that they use.

17 Mr. Byerly was hired in 2014. He signed an NDA at that  
18 time, which is attached as Exhibit A to the complaint, and what  
19 this particular -- he was the area manager and he's an engineer  
20 in what is referred to as the SVP chemical preparation area.

21 This is basically the chlorine dioxide part of the plant  
22 where all of the bleaching takes place and this is where the  
23 most protected part of our trade secrets exist. It's in the  
24 bleaching process, and essentially, as I mentioned, basically  
25 it's the cooking formulas that we use for the various products,

1 so he is intimately familiar with this process.

2 He's worked there since 2014. He understands these  
3 particular cooking formulas and he understands by what he signed  
4 and through the various years the trade secrets that exist  
5 there.

6 I think you will also see in the complaint that we make  
7 clear Rayonier goes to great extremes to protect this material.  
8 I think it's in Paragraph 23 of the complaint. In fact, we go  
9 through some detail on the various things we do to try to  
10 protect our trade secrets and have for years.

11 Rayonier obviously, too, obtains great economic value  
12 from the protection of these trade secrets and this information  
13 that we're able to use and to put into our product.

14 So that's sort of the base, the background, the  
15 information. And Rayonier, Ray-AM -- and I apologize, sometimes  
16 I say Rayonier. They split in 2014 and actually the other  
17 entity took the name Rayonier.

18 THE COURT: Let me ask you about that. When they did  
19 split, the non-disclosure agreement that Mr. Byerly signed, did  
20 it travel over?

21 MR. DURHAM: To Ray-AM, which is essentially, Your  
22 Honor, the parent company, so it went to Rayonier Advanced  
23 Materials.

24 THE COURT: And what was the mechanism when the parent  
25 company became the parent company?

1 MR. DURHAM: They retained all contracts that had been  
2 originally in the name of Rayonier, Inc. Rayonier, Inc. was  
3 essentially the REIT portion of the business and the timber  
4 portion. So they took all timber.

5 Everything to do with the mills remained with Rayonier  
6 Advanced Materials. Contracts, et cetera, employees, that all  
7 went to Rayonier Advanced Materials.

8 Rayonier Performance Fibers is an LLC, but it also has  
9 technical ownership of the mills, and there are various  
10 subsidiary entities, and a lot of that is done for various  
11 reasons, business reasons for the company, but Rayonier  
12 Performance Fibers and then Rayonier Advanced Materials are the  
13 two entities that will be involved in this.

14 THE COURT: All right.

15 MR. DURHAM: Your Honor, this basically comes down to  
16 the situation in which Mr. Byerly had been working for Rayonier  
17 Advanced Materials since 2014. There had been a couple of  
18 issues that had occurred, one in a shutdown in July, June of  
19 2020, where there are some issues that came up, and people were  
20 a little concerned about some things that may have been said.

21 Then in November/December of 2020 he --

22 THE COURT: The wellness check.

23 MR. DURHAM: The wellness check took place, and then in  
24 this last shutdown that started at the end of April of 2021,  
25 there were some other issues that came up. I think Mr. Byerly

1 at some point made some comments about gas or being exposed to  
2 gas or some other issues that may have taken place,  
3 understanding, of course, that during a shutdown, really there's  
4 not a whole lot of gas materials going on.

5 That's not to say that he wasn't exposed to some or  
6 smelled some type of material as a result of the shutdown and  
7 some of the contractors coming in and whether there was any  
8 other type of fiberglass or other kind of materials that were  
9 around, but the bottom line is there were some issues that came  
10 up, and on approximately May 25th of this year, they suggested  
11 that he go home, that there be just a temporary suspension,  
12 leave, and then what then later occurred was on approximately  
13 June 3rd, based upon their concern with some of the behavior  
14 that had occurred, that there was a termination at will that was  
15 taking place.

16 There was the proposed severance package and settlement  
17 agreement that was discussed and that there was going to be a  
18 payment at that time, a severance payment, of 25,000.00.

19 On the last day of acceptance of the severance package  
20 he had called Ray-AM and said he wouldn't take the 25,000.00,  
21 but would take two million. Then shortly thereafter, too, there  
22 had been some e-mails that had gone back and forth to some  
23 employees at the mill. Some of the e-mails were shut down as a  
24 result of a lot of e-mails, and there was a little concern,  
25 people just uneasy as a result of it, and ultimately there was

1 that e-mail that is attached as Exhibit B, and you will see it  
2 was actually sent to another engineer in the plant, but it was  
3 addressed to a lot of the corporate leadership, the CEO, Paul  
4 Boynton, Bill Manzer, who is one of the senior vice president in  
5 charge of all operations. Mr. Henderson himself was on the  
6 e-mail. The mill manager was on the e-mail.

7 And in that e-mail, it essentially states -- and just to  
8 paraphrase -- that, you know, "You could suffer -- this is the  
9 last card in my arsenal."

10 THE COURT: "Irreparable harm."

11 MR. DURHAM: "Irreparable harm to ten million to" -- no,  
12 "100 million," I believe, "to ten billion dollars," and that  
13 then in the last part of it, it talks about he had  
14 reverse-engineered the entire SVP plant.

15 Now, understanding when we're talking about the SVP  
16 plant, that is not a product. That is where we produce things  
17 and where our very essential trade secret information,  
18 confidential information, exists, and obviously it causes my  
19 client extreme concern.

20 The biggest part and why we are here -- and I want to be  
21 clear about this and the client wants to be clear about this --  
22 we're not here to hurt Mr. Byerly in any way. We're not here  
23 looking for millions of dollars or anything else.

24 What we're here for solely is to protect our trade  
25 secrets, to protect our business confidential information and



1     proprietary information, not only under the Trade Secrets Act  
2     but under the NDA. I mean, he has a responsibility not to  
3     disclose that information. He realized that we could go into  
4     court to get injunctive relief under Paragraph 5 of the NDA. He  
5     understands under 1(a) and 1(b) of the NDA the confidential and  
6     the trade secret information that exists, 1(d) that he has a  
7     responsibility to return any type of information that belongs to  
8     Ray-AM and to the company in any form, including any copies of  
9     it.

10           I know there's a comment in there about SpaceX and I'm  
11     not exactly sure where all that fits in, but if there is any  
12     type of intellectual property that's being used from Ray-AM for  
13     any purpose, it's supposed to come back to Ray-AM, and like many  
14     NDA's that I'm sure The Court has seen over time with  
15     companies -- I know the University of Georgia had it for anybody  
16     that's an employee of the University of Georgia -- anything  
17     that's invented or anything else using the process or the  
18     facilities of a company the NDA says belongs to that company.

19           Now, we have no interest in a spaceship, but what we do  
20     have an interest in is protecting our trade secrets, and so what  
21     we're asking The Court to do as a result of that is enter an  
22     order that will not allow him to disclose any trade secrets of  
23     Rayonier Advanced Materials, the plaintiffs in this case, to  
24     make sure that he does not misappropriate any of the trade  
25     secrets that he may have in his possession or in his head, that

1 also there is indication that there was a thumb drive where two  
2 files were downloaded.

3 We're not completely clear on all of the information  
4 that is on those two files, but it was characterized as "SVP"  
5 and I believe also "chlorine generator," and it has the  
6 potential to clearly have information that could be trade  
7 secrets, but irrespective of that, it's my client's property and  
8 he's not supposed to have that.

9 Now he has had some communication, I know, with Ms.  
10 McGuire. He had indicated that all the thumb drives and  
11 everything he had were left on his desk. I know that our IT  
12 department has looked at what was there and it does not match up  
13 as to what we understood was downloaded on the thumb drive that  
14 we have mentioned in the verified complaint.

15 So basically we just want in addition our material  
16 returned to us.

17 THE COURT: Thank you, Mr. Durham.

18 Let me hear from you, Mr. Byerly, if you will come to  
19 the podium. This is your opportunity to make any argument that  
20 you would like or to present any information that you would like  
21 The Court to consider.

22 MR. BYERLY: Certainly, Your Honor, and I will apologize  
23 in advance. I did not have time to get a lawyer due to the  
24 expedited nature of this hearing. I had to travel 1700 miles  
25 from where I was currently in Colorado, and, you know, I made it

1 here, so I apologize in advance for any unintentional rudeness,  
2 for my lack of understanding of court policy, so first off may I  
3 present Your Honor with three e-mail chains that I would ask  
4 Your Honor to read?

5 THE COURT: You may if you will first present it to the  
6 other side so that they can look at what it is that I'm looking  
7 at, and then I will take a look at it.

8 MR. BYERLY: Very well, I will let them. The middle one  
9 is the full e-mail of which you have only the last one. The  
10 earlier pieces are incredibly important as I believe Rayonier  
11 has no case whatsoever against me. My --

12 THE COURT: Wait, just to be clear, sir, so you're  
13 referring to what Rayonier provided in Exhibit B?

14 MR. BYERLY: I believe it was Exhibit B. I would have  
15 to pull up my copy.

16 THE COURT: They gave me your Monday, June 14th, 2021  
17 12:05 p.m. e-mail to a number of different addresses so what you  
18 have is the e-mails around it; is that right?

19 MR. BYERLY: Correct. You said you have the June 14th  
20 e-mail?

21 THE COURT: I do, the 12:05.

22 MR. BYERLY: The one you really need to see is the  
23 initial one I sent on June 4th.

24 THE COURT: Okay.

25 MR. BYERLY: That's the one that -- as well as the

1 documentation of where this all started. The short version, to  
2 kind of open my case, is that this is all a safety issue.

3 THE COURT: And, Mr. Durham, if you will pass that up.  
4 Let me take a look.

5 MR. BYERLY: May I now?

6 THE COURT: Yes, Mr. Byerly. Perhaps it will be better  
7 if I read this before you continue so we can stay on the same  
8 page.

9 MR. BYERLY: That would make it a lot easier.

10 THE COURT: And let me, I know you're here on your own  
11 accord, but Ms. Gilbert is going to write down every single  
12 thing we say in court so it's very important you not talk over  
13 anyone; understand?

14 MR. BYERLY: Yes, ma'am.

15 THE COURT: She's good, but she's not that good. No one  
16 is.

17 Mr. Byerly, if you will resume. I did have the  
18 opportunity to read these and we will mark these three as a  
19 Composite Defendant's 1. Ms. Sharp, if you will do that.

20 Continue.

21 MR. BYERLY: So the issue at hand and the root cause  
22 where all this started from is a safety issue. It's not a -- I  
23 in no way intend to, in any form, to use for my or any other  
24 third party's benefit or even for Rayonier's harm any of the  
25 intellectual property with which I am aware of.

1           However, I would also state that the property they  
2           reference largely does not exist. I am aware of information  
3           regarding things that they do consider to be trade secret simply  
4           because I indirectly came into contact with those things and  
5           consequently will keep that information solely to myself for no  
6           one's benefit.

7           The references they make to the SVP being trade secrets  
8           are completely -- well, I will just put it like this. If there  
9           is any trade secret to be had there, it's only there because I  
10          created it, and so it would be -- if they own it because I  
11          created it, that's fine, and I will not use any such things for  
12          my benefit either; however, the SVP plant is designed by a  
13          company currently known as Nouryon. I would have to look it up  
14          to spell it again. I don't remember if they changed names here  
15          several times in the last few years, and so any intellectual  
16          property most likely belongs to them rather than Rayonier  
17          Advanced Materials, and I have also communicated to all of my,  
18          you know, quote/unquote, reverse engineering, it's really just  
19          my gaining an understanding beyond the original understanding of  
20          the designers of the plant.

21          I spent enough time, I had enough opportunity and enough  
22          motivation for the benefit of Rayonier Advanced Materials to  
23          investigate as deeply as I possibly could the inner workings of  
24          that plant so that we didn't have what are known as decomp.  
25          That's what happens when the reaction takes off exponentially

1 and actually causes an explosion effectively inside the vessel.

2 Back in 2017 and 2018, we had a rash of I think it was  
3 over 200 decomp, if I recall correctly. We almost created that  
4 situation again, and the only reason we avoided it is because of  
5 my extensive knowledge, which I used expressly for Rayonier's,  
6 Ray-AM's benefit.

7 So I have only ever used the knowledge and details  
8 regarding the SVP for my employer per my agreement in accordance  
9 with the NDA.

10 So let me catch my thought here for a minute. Sorry.

11 Regarding the safety issues, which is really what  
12 started all this and ultimately resulted in my what I believe to  
13 be unlawful termination, was a -- it started off, it's been  
14 growing for several years, but it was -- it was so subtle, you  
15 know, that it was difficult to detect, and I couldn't really put  
16 my finger on exactly what it was. I just had a gut feeling that  
17 it wasn't right, that we were moving in the wrong direction.

18 Things continued to escalate and eventually I managed to  
19 wrap my mind around what the wrong direction was and that  
20 direction was that we were taking action to mitigate safety  
21 hazards that were so minor that the mitigation actually created  
22 a bigger hazard than the original concern in the first place,  
23 and they have been doing this now for several years, and they do  
24 it with the best of intentions. I don't believe it's malicious.  
25 I don't think -- I think they just don't realize it. For

1 example, if you have a risk of one in 10,000 of getting injured  
2 in a random day in the plant -- that's an arbitrary number but I  
3 think it's probably in the right ballpark -- and you increase  
4 the risk to one out of 8,000, that's not a good move. I mean,  
5 it might be done with good intentions, and I expressed my  
6 concerns somewhat generically in that first e-mail train last  
7 year and that was following the twice-a-year shutdown.

8           Every year we have an annual outage where, for a period  
9 of a few weeks, we take the entire plant down for maintenance  
10 work. It's by far the busiest and the most dangerous time of  
11 the year every year, and so that's when any safety issues that  
12 are present come to a head and become -- have a potential for  
13 serious harm.

14           The year -- last year, when I wrote that e-mail, I  
15 had -- it was my first shutdown in operations, so I had  
16 previously been in the engineering department where I designed  
17 equipment and installed and, you know, worked with maintenance  
18 to help them maintain it.

19           That last year was the first time I actually managed the  
20 equipment that I had helped install, and so I was -- I had  
21 operators who reported to me. I had a lot higher degree of  
22 responsibility than I had had in previous years, and it was very  
23 eye-opening because I suddenly saw all of the things that had  
24 been building in the back of my mind in full update, so to  
25 speak.

1           And so I made -- I expressed my concerns which were  
2 quite lengthy. I had plans to detail them in numerous  
3 subsequent entries documenting and bringing it to the attention  
4 of the levels of management and I started with the local  
5 management, which was, I felt, the appropriate action. I had  
6 previously expressed concerns to both my boss and his boss, who  
7 is Jim Henderson, by the way, present today in this courtroom,  
8 and they understood my concerns but they had no power to take  
9 action on them.

10           They were -- they were basically held and prevented from  
11 in any way following my recommendations by upper levels, which  
12 is why I escalated things by submitting a entry into our safety  
13 system, because Rayonier Advanced Materials is a company that  
14 claims to pride itself on safety. They claim that it's the  
15 Number 1 priority, and, frankly, what I have seen in the last  
16 few years does not indicate that to me, and what I've seen in  
17 the last few weeks is appalling.

18           So last year I expressed my concerns. Initially there  
19 was a big reaction. You know, Garrett Lewis, my direct  
20 supervisor, and Jim Henderson, who is in the courtroom, met with  
21 me to discuss my concerns. They took a nice long list. I  
22 thought they -- you know, well, let me rephrase that  
23 differently.

24           I know they took my concerns seriously, but, once again,  
25 management stopped them from executing any of my concerns.



1           Last year, I was exposed to chlorine dioxide gas. I was  
2   there when -- I was told to tighten packing. We have  
3   centrifugal pumps that are what we use to move the chlorine  
4   dioxide throughout the plant, and either those pumps --  
5   obviously, there's a shaft on that pump, and it spins. There is  
6   no way to perfectly prevent leakage, so you're going to have  
7   something leak by that shaft.

8           Rather than letting chlorine dioxide that is a very  
9   toxic hazardous chemical out, you put water in so that water  
10   leaks out and also leaks into the process.

11           In other words, you're always dripping water but you're  
12   not dripping chlorine dioxide. So it's a very effective means  
13   generally.

14           Both last year and this year, the sort of annual outage  
15   was split up. We have three different lines in the mill and  
16   three different -- you know, they can be run somewhat  
17   independently. That's debatable, but anyways, we ran one of  
18   them while two of them shut down, which meant we had most of the  
19   chlorine dioxide pumps down; however, there were two that were  
20   still running in a very upset, unstable condition because the  
21   utilities department is used to supplying all three lines.

22           We rarely -- every once in a while -- will take down one  
23   line for a down day of work. But that's for one day. This was  
24   weeks -- well, a week, I guess, a week-plus whenever they took  
25   down, you know, all the mills except C mill, which meant that,

1 you know, the water supply system that protects these pumps was  
2 not in a normal state.

3 Last year, I expressed concern that tightening the  
4 packing was not the right thing to do after we tried it multiple  
5 times and it made it worse. Every single time we leaked more  
6 chlorine dioxide when we tightened the packing rather than less,  
7 and so this year when I was asked to tighten the packing again,  
8 I said, "Please don't make me do that; it's not the right thing  
9 to do; it will make it worse." I had no idea how much worse.

10 Eventually I was forced to tighten the packing, and you  
11 can read the description of the events on that June 4th e-mail,  
12 which, by the way, Rayonier did not ask me to provide prior to  
13 my termination.

14 I believe there are OSHA and possible criminal  
15 litigations that will potentially follow from that. I'm, by the  
16 way, currently an OSHA whistleblower. I have made the report to  
17 OSHA. I have not heard yet from the representatives. I'm not  
18 sure what's taking them so long.

19 I will probably call them again to see how they are  
20 doing, and because this, this last year, when we tightened the  
21 packing, it actually backed chlorine dioxide into the piping  
22 that is water piping. I only happened to find it because I was  
23 doing an audit on a lockout, which is the means we use to safely  
24 prepare equipment for work. It's where you hang locks on all  
25 applicable valves, breakers, anything that could potentially

1 have energy in it to make equipment safe to work on.

2 I was verifying that per my job. I actually looked at  
3 the wrong valve but thought, you know, it was a water valve. I  
4 knew it should have been safe to open that valve; however, it  
5 was not. When I opened the water valve, pure chlorine dioxide  
6 solution came out. It would have been in that pipe at 11 grams  
7 per liter. Normally chlorine dioxide is stored in chill water.  
8 It's done because you cannot actually dissolve chlorine dioxide.  
9 It will always be a gas; but, if you keep it in chill water, it  
10 will very, very slowly escape through the water.

11 If you have it in warm water, it will escape instantly.  
12 This is what happened. I was exposed to what I would estimate  
13 to be ten, at least ten parts per million chlorine dioxide gas.  
14 The immediately-dangerous-to-life-and-death threshold I believe  
15 is one part per million, and there have been recorded instances  
16 where 19 parts per million was fatal.

17 So I literally almost died this shutdown.

18 THE COURT: I hear what you're saying is that you have  
19 what you believe are very sincere --

20 THE WITNESS: Very serious.

21 THE COURT: -- and serious safety concerns.

22 MR. BYERLY: Correct.

23 THE COURT: What I don't hear is how that allows you to  
24 break the confidentiality, the non-disclosure agreement.

25 MR. BYERLY: I'm confused. I'm not breaking the

1 non-disclosure agreement.

2 THE COURT: So you don't have any --

3 MR. BYERLY: No.

4 THE COURT: -- intellectual property?

5 MR. BYERLY: Nothing except what's in my mind, and I  
6 obviously cannot erase that. But I can choose not to use it.

7 THE COURT: Excuse me. Just to be clear, you have not  
8 downloaded any information --

9 MR. BYERLY: The flash drives are where they were at.

10 THE COURT: Wait. I'm going to ask you one more time --

11 MR. BYERLY: Sure.

12 THE COURT: -- wait until I finish. Okay?

13 MR. BYERLY: My apologies.

14 THE COURT: So my question is: You have not downloaded  
15 any intellectual property on a thumb drive or any kind of device  
16 that will allow you to take what Rayonier is classifying as  
17 intellectual property --

18 MR. BYERLY: Uh-huh.

19 THE COURT: -- or any kind of protected information?  
20 You have not downloaded anything?

21 MR. BYERLY: Well, I did download it onto two -- well,  
22 one flash drive which Rayonier has. It's in their possession.  
23 I never took that flash drive out of the office.

24 THE COURT: All right.

25 MR. BYERLY: It's still there wherever they are

1 currently storing it. The second flash drive --

2 THE COURT: Wait just one second. I'm sorry. As you  
3 stand before me now, you have never taken away from Rayonier,  
4 other than in your mind --

5 MR. BYERLY: Uh-huh.

6 THE COURT: -- any form of flash drive, anything that  
7 has their information on it?

8 MR. BYERLY: To the best of my knowledge.

9 THE COURT: All right. Well, you would be the one to  
10 know.

11 MR. BYERLY: I would certainly hope that I'm the one to  
12 know.

13 THE COURT: Have you already disclosed anything in your  
14 own head or in any other form to any third party other than  
15 Rayonier?

16 MR. BYERLY: Not since my termination.

17 THE COURT: Prior to your termination, you have?

18 MR. BYERLY: As I've mentioned, the owner of the SVP  
19 plant technology is Nouryon. Their representative, Barry  
20 Billet, and I have had numerous conversations while employed by  
21 Rayonier for Rayonier's benefit.

22 THE COURT: After your termination, you have not?

23 MR. BYERLY: No.

24 THE COURT: Is it your intention to violate your  
25 non-disclosure agreement in any way?

1 MR. BYERLY: Not at all.

2 THE COURT: Can you articulate for me what would be the  
3 harm to you if I were to enjoin you from doing something you say  
4 you don't want to do?

5 MR. BYERLY: I'm not aware of the legal ramifications of  
6 having that on my record. That would be the only potential harm  
7 but I'm not aware of any other harm.

8 THE COURT: You're obviously a very intelligent person,  
9 and one thing I want you to take away from this hearing --

10 MR. BYERLY: Uh-huh.

11 THE COURT: -- more than anything else --

12 MR. BYERLY: Sure.

13 THE COURT: -- is when The Court issues an order --

14 MR. BYERLY: Yes.

15 THE COURT: -- it is, of course, binding on you.

16 MR. BYERLY: Understood.

17 THE COURT: I understand that, on the one hand, you have  
18 serious heartfelt safety concerns.

19 MR. BYERLY: Uh-huh.

20 THE COURT: What we're here about, though --

21 MR. BYERLY: Right.

22 THE COURT: -- is actually a separate matter.

23 MR. BYERLY: Okay.

24 THE COURT: And it's that non-disclosure agreement.

25 MR. BYERLY: Sure.

1           THE COURT: If you do want to follow up about safety  
2 concerns --

3           MR. BYERLY: Uh-huh.

4           THE COURT: -- you have legal avenues to do so.

5           MR. BYERLY: Correct.

6           THE COURT: One of which is decidedly not violating a  
7 non-disclosure.

8           MR. BYERLY: Absolutely.

9           THE COURT: Understand?

10          MR. BYERLY: Absolutely.

11          THE COURT: I have concern that -- and I did read all  
12 the e-mails that you submitted. You seem to equate, to put it  
13 in a base way, give me ten million dollars or I will disclose  
14 this.

15          MR. BYERLY: No, ma'am. Let me explain that further.  
16 The only references for the dollar amounts that I made were  
17 merely to get attention because I was not getting attention  
18 otherwise.

19          THE COURT: I understand.

20          MR. BYERLY: I apologize that I'm basically wasting your  
21 time this morning.

22          THE COURT: You're not wasting my time. It's a serious  
23 dispute.

24          MR. BYERLY: It is a serious dispute, and I'm very sad  
25 that it came to this because --

1 THE COURT: But here we are.

2 MR. BYERLY: Here we are, and to be clear, you know,  
3 it's not --

4 THE COURT: Wait just a minute. So, again, the thing I  
5 want you to take away more than anything else --

6 MR. BYERLY: Uh-huh.

7 THE COURT: -- is that the consequences of violating a  
8 court order --

9 MR. BYERLY: Very serious.

10 THE COURT: -- of non-disclosure, they are very serious.

11 MR. BYERLY: Yes.

12 THE COURT: And money would be, really in a way, the  
13 least concern to you. There would be other consequences of  
14 finding yourself in contempt of court.

15 MR. BYERLY: Yes, ma'am.

16 THE COURT: So I often encounter people who really  
17 believe they are right on one point and they go horribly astray  
18 by trying to break other laws, and anyway I appreciate your  
19 time, and let me turn back then, as the movant, do you have  
20 any --

21 MR. BYERLY: May I make one last comment?

22 THE COURT: You may.

23 MR. BYERLY: Regarding the last e-mail that Rayonier  
24 seems to think is the basis of any attempts of mine to -- my  
25 only intentions in referencing SpaceX and NASA were to



1 illustrate, by referencing totally separate industries, what my  
2 capability is so that they would hopefully listen to me and  
3 listen because all I want is for Rayonier to say, "Here's what  
4 we've done to mitigate this safety issue," because my fear --  
5 someone will replace me. They have to. February is the next  
6 shutdown. I had seven years' experience and I almost died.  
7 Someone will lose their life potentially, you know,  
8 hypothetically, if nothing is done. I can't morally stand here  
9 and do nothing, but the avenue I have left to me, you know --

10 THE COURT: Is not violating --

11 MR. BYERLY: -- is not -- that's right, it's not  
12 violating the -- I will never violate the non-disclosure  
13 agreement. I will thoroughly review with lawyers before I do  
14 any action whatsoever that could in any way be perceived as  
15 violating a non-disclosure agreement. That is not my intention,  
16 wholeheartedly.

17 THE COURT: Once The Court issues an order, you would  
18 need to come back to court to --

19 MR. BYERLY: Sure.

20 THE COURT: -- do anything; you understand that?

21 All right. Thank you, Mr. Byerly. I appreciate it.  
22 And in brief rely, Mr. Durham?

23 MR. DURHAM: Your Honor, I'll try to be brief.

24 First of all, the company has absolutely no issues with  
25 any investigation into safety. We deal with OSHA all the time.

1 That's not a problem. Rayonier has done -- Ray-AM has done  
2 their own initial investigation, done an investigation into all  
3 of those situations.

4 Through their investigations they have not found the  
5 safety concerns expressed. But we're more than willing to meet  
6 those, and that is a completely separate issue as to why we are  
7 here.

8 Irrespective, as far as the trade secret information,  
9 once again, I said earlier that the equipment, some of the  
10 technology is not necessarily what we're talking about.

11 We're talking about the chemical bleaching process that  
12 constitutes trade secrets that he does have in his head.  
13 Irrespective of all of the various concerns he may have  
14 expressed, the simple fact of the matter is that he did send  
15 those e-mails that are quite threatening from the standpoint of  
16 irreparable harm, reverse engineering and trade secret  
17 information, which is something that Ray-AM very much protects  
18 and needs to protect.

19 And I think I mentioned in the other matters early on  
20 about the four factors, looking at, as far as what is important  
21 in making the determination of whether an injunction is entered,  
22 I sort of glossed over the disservice to the public part in the  
23 last part of it, but I would say to The Court, too, that it's  
24 extraordinarily important to the public to know that  
25 confidential and trade secret and privileged information for

1 companies will, in fact, be protected, and it's also important  
2 for an entire community in Wayne County and surrounding counties  
3 being that it is the largest employer in that area and the  
4 largest tax base in Wayne County.

5 The viability of the company is also important to a lot  
6 of the public, so I would just emphasize that on that last  
7 factor, it's an important factor not just to the viability of  
8 Ray-AM, but to a lot of people that are involved and that are  
9 employed, and trade secrets just simply cannot be disclosed and  
10 that's what we're asking. That's what we're here for.

11 THE COURT: Gentlemen, I appreciate your arguments, and  
12 I am ready to rule. I will, of course, follow up with a written  
13 order that will be sent to both of you, but after considering  
14 the verified complaint and the attachments, the arguments made  
15 by both parties and the submission presented by Mr. Byerly here  
16 in court today, I do find that the requirements for issuing a  
17 temporary restraining order under Rule 65 have been met, and to  
18 be clear, quite clearly met.

19 In the Eleventh Circuit there are four standard  
20 conditions that any plaintiff seeking such a restraining order  
21 must show, first that a substantial likelihood of success on the  
22 merits has been shown and that is clearly shown here. There is  
23 a non-disclosure agreement, and there are the various causes of  
24 actions that are set forth in the verified complaint, the  
25 elements of which are satisfied, based on the exhibits that have

1    been shown. There's substantial likelihood of success on  
2    showing that those elements are satisfied. Second, the  
3    plaintiff has shown that they will suffer irreparable harm  
4    unless the temporary restraining order issues. Mr. Byerly has  
5    given his assurances in court today that he has no intention of  
6    violating the non-disclosure agreement, and there is, however,  
7    the e-mail that he sent perhaps as somewhat of a hollow threat,  
8    but nevertheless if he were not restrained from doing that,  
9    obviously the plaintiff would suffer irreparable harm. That  
10   phrase is actually reflected in Mr. Byerly's, the middle part of  
11   the e-mail chain.

12           Third, I do find that the threatened harm to the  
13   plaintiff far outweighs the harm to the defendant. The harm to  
14   the plaintiff would be the disclosure of the trade secrets that  
15   have been developed over many years and form part of the  
16   underlying viability of the company. The harm to the defendant  
17   is really not apparent. He has already said he's not going to  
18   do this anyway, and so ordering him to do what he doesn't intend  
19   to do is not much of a harm.

20           Fourth, I do find that issuing the temporary restraining  
21   order would actually be in the public interest. Not just a lack  
22   of aversion to the public interest, it would actually promote  
23   the public interest because we do want individuals and companies  
24   to have an incentive to develop trade secrets and protected  
25   information and so that would promote that public interest.

1           As I said before, subject matter jurisdiction, personal  
2 jurisdiction, venue have all been proven. Therefore, The Court  
3 finds that the temporary restraining order should issue, and  
4 again I will provide both sides a written copy that will be  
5 better stated in writing, but nevertheless the content of the  
6 restraining order will restrain Mr. Byerly and enjoin him from  
7 misappropriating any of plaintiffs' trade secrets.

8           Mr. Byerly, that means you simply can't share that  
9 information with anybody; second, that you are ordered to return  
10 to the plaintiffs any trade secrets in any form whatsoever that  
11 you have retained within two days of today.

12           I understand you say that you don't have any. And it is  
13 important that you recheck and make sure because you are hereby  
14 ordered to return any trade secrets to the plaintiff within two  
15 days. The temporary restraining order will remain in effect  
16 until I consider the matter for the issuance of a preliminary  
17 injunction and we can do that by phone if the parties agree, and  
18 we will be in contact with you about that transition from a  
19 temporary restraining order to a preliminary injunction.

20           As I said, I will issue a written order to that effect.  
21 Mr. Byerly, remember, I do caution you it's more important than  
22 you might think that you comply with that.

23           All right, we will be in recess.

24           (Proceeding concluded at 11:20 a.m.)  
25

CERTIFICATION

I certify that the foregoing is a true and correct transcript of the stenographic record of the above-mentioned matter.



07/01/2021

Debra Gilbert, Court Reporter

Date